



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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By ECF

March 20, 2015

The Honorable Gregory H. Woods
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: ACLU v. DOJ, 13 Civ. 7347 (GHW)

Dear Judge Woods:

This Office represents defendant, the United States Department of Justice (the “government”), in the above-named action, brought by the American Civil Liberties Union (the “ACLU”) under the Freedom of Information Act. As directed by the Court in its order of March 5, 2015, we write to provide a joint status report regarding the government’s undertakings in response to the March 3, 2015, order and plaintiffs’ request for searches of United States Attorney’s Offices that the parties had previously agreed to defer in this case.¹ In sum, the parties are proceeding on two tracks: the government has begun the searches and processing necessary to comply with the March 3 order and plaintiffs have identified the searches they will seek to have performed in the United States Attorney’s Offices, while at the same time the parties are discussing possible means to resolve or at least substantially narrow both this litigation and another FOIA request that is still in the administrative stage before the relevant agencies.

First, the National Security Division has begun gathering documents responsive to category no. 3 of the ACLU’s request, to comply with the Court’s directive that NSD interpret that request more broadly. NSD has also begun the process of indexing the documents and evaluating whether they qualify for FOIA exemptions.

The U.S. Attorney’s Office for the District of Colorado has reviewed its search procedure, and determined that its prior search captured all records responsive to the more broadly interpreted category no. 3 of the ACLU’s request. As explained in the government’s motion papers, NSD was responsible for reviewing and processing those records. Accordingly, NSD will re-review the documents gathered from Colorado in the prior search.

¹ The parties are providing this joint status report ahead of the Court’s March 26, 2015, deadline because plaintiffs’ counsel will be traveling with very limited telephone and email access next week. The government will continue to make progress in the coming days.

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The U.S. Attorney's Office for the District of Oregon lost the results of its prior search due to an erased computer disk, but is re-gathering those results consistent with the Court's order, and will also provide those results to NSD for further review and processing.

In addition to the expanded search the Court directed the government to undertake in its March 3 order, the ACLU has asked the government to conduct the following searches of United States Attorney's Offices for documents responsive to the original FOIA request, which the parties had previously agreed to defer:

- (1) In the Eastern District of New York, the Northern District of Illinois, the Southern District of Florida, and the Southern District of California: searches for records responsive to categories nos. 2 and 3 of the original FOIA request. The ACLU has identified these offices as districts where notice of FISA Amendments Act surveillance was provided to criminal defendants or where there has been litigation related to the government's use of that surveillance.
- (2) In each of the remaining United States Attorney's Offices: searches for any version of the "FISA-derived guidance" and documents addressing that guidance.

Separately, however, the parties are also discussing the possibility of an agreement that would obviate the need for the searches described above by focusing the remaining dispute in this case on a smaller set of documents. Those discussions have been productive and will continue in an effort to limit the demands on the parties' and the Court's resources.

We thank the Court for its consideration. The parties expect to provide the Court with further information concerning their progress at the status conference scheduled for April 2, 2015.

Respectfully,

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United States Attorney

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